LIBRARY
REME COURT. U. S.

Office-Supreme Court, U.S.
FILED
MAY 13 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1968

No. 1284

WILLIAM EVERHARDT, ARNOLD ECKLAND, RUSSELL E. GARRETT, DOROTHY HAYES as Tutrix of EDWARD HAYES and the GREATER NEW ORLEANS MOTORCYCLE ASSOCIATION,

Appellants,

versus

CITY OF NEW ORLEANS, VICTOR H. SCHIRO and JOSEPH GIARRUSSO,

Appellees.

On Appeal from the Supreme Court of the State of Louisiana

MOTION TO DISMISS APPEAL FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION AND BRIEF IN SUPPORT

ALVIN J. LISKA
City Attorney

ERNEST L. SALATICH
Second Assistant City Attorney

MAURICE B. FRIEDMAN
Assistant City Attorney
Attorneys for the Appellees
Room 2 W 23, City Hall
New Orleans, Louisiana 70112

J. G. HAUSER, INC., "Legal Printers", 441 Gravier St., N. O., La.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1968

No. 1284

WILLIAM EVERHARDT, ARNOLD ECKLAND, RUSSELL E. GARRETT, DOROTHY HAYES as Tutrix of EDWARD HAYES and the GREATER NEW ORLEANS MOTORCYCLE ASSOCIATION,
Appellants,

versus

CITY OF NEW ORLEANS, VICTOR H. SCHIRO and JOSEPH GIARRUSSO,
Appellees.

MOTION TO DISMISS APPEAL FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION AND BRIEF IN SUPPORT

NOW INTO COURT, through its counsel undersigned, comes the Appellees and move this Court to dismiss this appeal for want of a substantial federal question. The Appellants, in their jurisdictional statement, cite holdings by lower Courts in various states and two opinions of Attorneys General in support of their contention that there is here involved a substantial federal question.

Appellees in their attached brief will attempt to show that the Supreme Courts of the various states have unanimously upheld the constitutionality of a Motorcycle Helmet Law. In fact, the Supreme Court of Massachusetts in *Commonwealth vs. Howie,* 238 N.E. 2d. 373, specifically upheld such a statute, and, this court denied certiorari, ____ U.S. ____, 89 S.Ct. 485, 21 L.Ed.2d. 464, under the name of Howie vs. Massachusetts, No. 601, October Term 1968.

WHEREFORE, appellees move the Court to dismiss this appeal for want of a substantial federal question.

BRIEF IN SUPPORT OF MOTION TO DISMISS APPEAL

The highest courts of the other states have passed on this type of helmet law in four other reported cases. In every instance, the statutes have been held to be constitutional. The first is a decision of the Supreme Court of Rhode Island, dated May 8, 1968, in the matter of *State ex rel. Colvin vs. Lombardi, 241 A.2d. 625,* in which the helmet law of Rhode Island was held constitutional. The second is a decision of the Supreme Judicial Court of Massachusetts, dated June 5, 1968, in the matter of *Commonwealth vs. Howie, 238 N.E.2d. 373,* in which a similar statute was upheld as a valid exercise of the police power. *In the latter case certiorari was denied by this court, U.S. , 89 S.Ct. 485, 21 L.ED.2d. 464 (1968).*

The third is *BISENIUS vs. KARNS,* dated March 7,

1969, 165 NW2d. 377, in which the Supreme Court of Wisconsin held the statute constitutional.

The fourth is *STATE OF NORTH CAROLINA vs. ANDERSON,* dated March 12, 1969, , 166 S.E.2d. 49, in which the Supreme Court of North Carolina held a similar statute constitutional.

The possibility of death and serious injury to cyclists and the general public is shown by the fact that the New Orleans Police Department records indicate that in 1966 there were *653 accidents* involving motorcycles, *468 resulting in injuries. Seven people were killed.* Not one of the fatalities wore a helmet at the time of the accident. These appalling statistics are borne out by national statistics compiled by the American Automobile Association. This study dated August 8, 1966, the first two pages of which are attached hereto as Appendix "A" show an increase in motorcycle registration from 575,080 in 1960 to 1,875,000 (estimated) in 1966. 300,000 foreign light-weights were sold in 1964. The death rate for 1965 was estimated at *1,500 persons.*

The point need not be labored that with this appalling accident rate on our roads and highways the drivers of other vehicles on the highway are necessarily exposed to the danger of becoming involved with these motorcycles which, when they go out of control and are involved in an accident, will necessarily endanger these other motorists on the road.

Recognizing the need for safety on our highways the Congress of the United States, on September 9, 1966 (Public Law 89-546; 30 Stat. 731) passed the High-

way Safety Act of 1966. Sec. 402 (a) and Sec. 402 (c) are most pertinent, particularly in requiring that "After December 31, 1968, the Secretary shall not apportion any funds under this subsection to any State which is not implementing a highway safety program approved by the Secretary in accordance with this section". Pursuant to this Act, the Secretary in June of 1967 adopted a Highway Safety Program Standard for Motorcycle Safety, a copy of which is annexed hereto as Appendix "B". This program provides, at Page 2, as follows:

> "I The program shall provide as a minimum that: * * *
>
> "B Each motorcycle operator wears an approved safety helmet and eye protection when he is operating his vehicle on streets and highways."

The Congress and the agency authorized by Congress have required for safety on our highways that there be Motorcycle Helmet Laws; the Supreme Courts of all of the States that have reviewed their Motorcycle Helmet Laws have upheld them; and, finally, this Court in the *Howie* matter denied certiorari to review the holding by the Supreme Court of Massachusetts that its Motorcycle Helmet Law was constitutional. It is, therefore, respectfully submitted, that this appeal be dismissed for want of a substantial federal question.

ALVIN J. LISKA
CITY ATTORNEY

ERNEST L. SALATICH
SECOND ASSISTANT
CITY ATTORNEY

MAURICE B. FRIEDMAN
ASSISTANT CITY
ATTORNEY
ATTORNEYS FOR THE
APPELLEES
ROOM 2 W 23 — CITY HALL
NEW ORLEANS, LA. 70112

CERTIFICATE

I, the undersigned counsel, hereby certify that a copy of the above and foregoing motion and brief has been served upon Messrs. Michael O. Miranne and William F. Wessel, attorney of record for appellants, by mailing them a copy, in the United States Mails, postage prepaid, addressed to them at their office, 1605 National Bank of Commerce Building, New Orleans, Louisiana, 70112, and Mr. Elbert J. Kram, Attorney for amicus curiae, by mailing him a copy, in the United States Mails, postage prepaid, addressed to him at his office, 100 East Broad Street, Columbus, Ohio 43215.

_____

ALVIN J. LISKA

New Orleans, Louisiana
_____, 1969

APPENDIX "A"

Engineering & Safety Dept.

American Automobile Association
1712 G Street, N.W.
Washington, D. C. 20006

August 8, 1966

MOTORCYCLES AND THEIR OPERATION

1. *Introduction*

This report is prepared to meet the needs of persons seeking information on the great increase in the use of motorcycles in recent years. For the purpose of this discussion a motorcycle is considered to be any two or three wheeled motor vehicle. This includes what are commonly called heavy and light weight motorcycles, scooters, motor bikes and bicycles with motor attached. Information on this subject is very limited. Information that could be assembled is summarized in the following pages.

II. *Increase in Motorcycle Registration*

In recent years there has been a phenominal increase in registration, especially among the light weights. The following figures, are from "Highway Statistics", Bureau of Public Roads.

Year	*Motorcycle Registration*	*Increase over previous year*
1960	575,080	
1961	595,669	3.5%
1962	660,400	10.9
1963	786,318	19.0
1964	984,760	24.2
1965	1,380,726	40.0
1966	1,875,000 estimated by the American Motorcycle Association, Inc.	

The Motorcycle and Allied Trades Association reported sales of 335,000 in 1964 and 540,000 in 1965, or an increase of 60%.

Much of this increase is accounted for by the sale of foreign light weight motorcycles. The National Safety Council estimates that 300,000 of these light weights were sold in 1964.

An interesting study of student ownership was made in 1965 by Southern Illinois University, Carbondale, Illinois. The records of 1,685 students who registered their motorcycles with the University were analyzed. Of those registered 1,607 were men and 78 were women. Also 1,632 were single and 53 married.

The distribution by classes was as follows:

Freshmen	667
Sophomore	463
Junior	344
Senior	186
Graduated	25
Faculty	18

III. *Accident Records*

With increased motorcycle registration there has been an increase in motorcycle accidents. The following table, based on information from vital statistics of the U.S. Public Health Service summarizes the accident experience in recent years.

	Deaths of Motorcycle Riders		*Deaths of all Motor Vehicle Occupants*	
Year	*Number*	*Increase over previous year*	*Number*	*Increase over previous year*
1960	730		29,742	
1961	697	4.5%	29,866	0.4%
1962	759	8.9	32,311	8.2
1963	882	16.3	34,694	4.3
1964	1,118	26.8	37,960	9.4

There are no reliable figures available on mileage driven for motorcycles. The following table gives the deaths per 10,000 motorcycles in recent years.

Year	*Number of Motorcycles*	*Deaths*	*Deaths per 10,000 Motorcycles*
1960	575,080	730	12.7
1961	595,669	697	11.7
1962	660,400	759	11.5
1963	786,318	882	11.2
1964	984,760	1,118	11.3
1965	1,380,726	1,500 est.	10.9 est.

It is apparent that the rate has changed little in recent years despite the large number of *new* riders on the road. During the same period for all motor vehicles the deaths per 10,000 vehicles varied from 5.0 to 5.5, or about half that for motorcycles alone. It is quite obvious that once an accident occurs a motorcycle rider has far less protection and is more likely to be fatally injured than a person in a car.

Mileage death rates would be more meaningful but they would be largely guesswork since the mileage driven for motorcycles is not known.

APPENDIX "B"

U.S. DEPARTMENT OF TRANSPORTATION
Federal Highway Administration
National Highway Safety Bureau
Washington, D.C. 20591

June 1967

Highway Safety Program Standard

MOTORCYCLE SAFETY

INTRODUCTION

It is clear that there are many actions which can be taken to reduce significantly deaths and injuries from motorcycle accidents. Every State should have a program specifically related to motorcycle operation in-

cluding requirements for licensing, inspection and safety equipment.

BACKGROUND

Deaths and injuries from motorcycle accidents doubled between 1963 and 1965. This fact is particularly alarming when it is understood that most of those killed and injured were young people under the age of 25. Motorcycle registrations have jumped from 574,080 in 1960 to 1,914,700 in 1966. By 1970 the annual increase is expected to reach one million per year. Motorcycle safety takes on grave dimensions in view of the fact that since 1960 the rate of motorcycle fatalities has increased at about the same rate as the number of motorcycles.

PURPOSE

To assure that motorcycles, motorcycle operators and their passengers meet standards which contribute to safe operation and protection from injuries.

STANDARD

For the purposes of this standard a motorcycle is defined as any motordriven vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride within an enclosed cab.

Each State shall have a motorcycle safety program to insure that only persons physically and mentally qualified will be licensed to operate a motorcycle; that

protective safety equipment for drivers and passengers will be worn; and that the motorcycle meets standards for safety equipment.

I. The program shall provide as a minimum that:

A. Each person who operates a motorcycle:

1. Passes an examination or reexamination designed especially for motorcycle operation.

2. Holds a license issued specifically for motorcycle use or a regular license endorsed for each purpose.

B. Each motorcycle operator wears an approved safety helmet and eye protection when he is operating his vehicle on streets and highways.

C. Each motorcycle passenger wears an approved safety helmet, and is provided with a seat and footrest.

D. Each motorcycle is equipped with a rearview mirror.

E. Each motorcycle is inspected at the time it is initially registered and at least annually

thereafter, or in accordance with the State's inspection requirements.*

II. The program shall be periodically evaluated by the State for its effectiveness in terms of reductions in accidents and their end results, and the National Highway Safety Bureau shall be provided with an evaluation summary.

*See Periodic Motor Vehicle Inspection standard